

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESMELING BAHENA,) Case No.: 1:20-cv-01685-SAB (PC)
Plaintiff,)
v.) ORDER DIRECTING CLERK OF COURT TO
RODRIGUEZ, et al.,) RANDOMLY ASSIGN A DISTRICT JUDGE TO
Defendants.) THIS ACTION
) FINDINGS AND RECOMMENDATIONS
) RECOMMENDING DISMISSAL OF CERTAIN
) CLAIMS AND DEFENDANTS
) (ECF No. 12)
)

Plaintiff Esmeling Bahena is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 11, 2021, the undersigned screened Plaintiff's complaint and found that he stated cognizable failure to protect claim against Defendants Farlon, Rodriguez, Stan and Hernandez, and a cognizable excessive force claim against Defendant Harmon. (ECF No. 8.) However, Plaintiff was advised that he failed to state any other cognizable claims. (*Id.*) Therefore, Plaintiff was advised that he could file an amended complaint or a notice of intent to proceed on the claim found to be cognizable. (*Id.*)

On April 13, 2021, Plaintiff notified the Court of his intent to proceed on the claims found to be cognizable. (ECF No. 12.) Accordingly, the Court will recommend that this action proceed on Plaintiff's failure to protect claim against Defendants Farlon, Rodriguez, Stan and Hernandez, and

1 excessive force claim against Defendant Harmon. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662,
2 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338,
3 342 (9th Cir. 2010).

4 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District
5 Judge to this action.

6 Further, it is HEREBY RECOMMENDED that:

- 7 1. This action proceed on Plaintiff's failure to protect claim against Defendants Farlon,
8 Rodriguez, Stan and Hernandez, and excessive force claim Defendant Harmon; and
9 2. All other claims and Defendants be dismissed for failure to state a cognizable claim.

10 These Findings and Recommendations will be submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
12 after being served with these Findings and Recommendations, Plaintiff may file written objections
13 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
14 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
15 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
16 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: April 14, 2021



20 UNITED STATES MAGISTRATE JUDGE

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